

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

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v.

*

Criminal No.: 14-PJM-0077

GREGORY ANTHONY KING

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**MOTION TO SUPPRESS TANGIBLE AND DERIVATIVE EVIDENCE- CELLPHONE
DATA AND HISTORICAL CELL SITE LOCATION DATA**

The Defendant, Gregory Anthony King, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Ebise Bayisa, Assistant Federal Public Defender, hereby respectfully moves this Honorable Court, pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure, to suppress any and all cell phone data and historical cell cite location data. In support of the motion, Mr. King states as follows:

1. Mr. King is currently charged in a three-count Indictment with Sexual Exploitation of a Minor for the Purpose of Producing Child Pornography in violation of 18 U.S.C. §2251(a) (Count One); Travel with the Intent to Engage in Illicit Sexual Conduct in violation of 18 U.S.C. §2423(b) (Count Two); and Use of Interstate Commerce Facility to Entice a Minor to Engage in Sexual Activity in violation of 18 U.S.C. §2242(b) (Count Three). Mr. King was arraigned on March 26, 2014, and entered a plea of not guilty to all the counts in the Indictment.

2. The discovery provided by the government indicates that Mr. King began communicating with the victim, a minor, on Facebook in October of 2013. On November 23, 2013, the victim's mother called the Laurel Police Department and stated that she learned that Mr. King

came to the victim's house the evening of November 21, 2013 and that the victim and Mr. King had sexual intercourse that night. The victim was interviewed by members of the Laurel Police Department and confirmed the details.

3. After the interview with the victim, Detective Cheeks from the Laurel Police Department filed an application pursuant to Md. Code Ann. Courts and Judicial Proceedings §10-4B-03, for an Order requiring Verizon Wireless, a provider of electronic communication service, to disclose to the Laurel Police Department information related to Mr. King's cellular phone account ("the Application"). Specifically, the Application requested that Verizon provide, among other things, call detail records and cellular site location information from November 21, 2013 at 5:00pm to November 22, 2013 at 8:00am as well as GPS coordinates of the telephone between those dates and times.

4. On December 20, 2013, Judge Bland of Circuit Court for Prince George's County granted the Application.

5. Md. Code Ann. Courts and Judicial Proceedings §10-4B-03, authorizes disclosure to law enforcement of a record of other information pertinent to a subscriber upon an application, certified under oath, that the information sought is relevant to an ongoing investigation being conducted by that agency. The showing required under this statute does not satisfy the requirement for a warrant imposed by the Fourth Amendment or the Rule 41 of the Federal Rule of Criminal Procedure in that Md. Code Ann. Courts and Judicial Proceedings §10-4B-03, does not require a judicial finding of probable cause.

6. Under current location technology, historical cell site information reveals non-public information about constitutionally protected areas. Historical cell site records are subject to Fourth Amendment protection where they have the potential to reveal intimate details about the user's

private life. Disclosure of historical cell site location information constitutes a search within the meaning of the Fourth Amendment.

7. The warrantless seizure of cell site information in this case violated Mr. King's right under the Fourth Amendment to be free from unreasonably searches and seizures.

8. For these and other reasons that may appear to the Court on a hearing on this Motion, Mr. King requests that the Court grant this motion.

WHEREFORE, Mr. King respectfully moves this Honorable Court to suppress any historical cell site information or other data obtained as a result of the warrantless acquisition of information provided by Verizon in response to law enforcement's application under Md. Code Ann. Courts and Judicial Proceedings §10-4B-03.

Respectfully submitted,

JAMES WYDA
Federal Public Defender
for the District of Maryland

/s/

EBISE BAYISA
Assistant Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770
Telephone: (301) 344-0600
Facsimile: (301) 344-0019
Email: Ebise_Bayisa@fd.org

MEMORANDUM OF POINTS AND AUTHORITIES

1. Fourth Amendment to the United States Constitution
2. *United States v. Jones*, ____ U.S. ____, 132 S. Ct. 945 (2012) (warrantless GPS surveillance for extended period violates the Fourth Amendment)
3. *In re Application of the United States of America for Historical Cell Site Data*, 747 F. Supp. 2d 827 (S.D. Tex. 2010) (historical cell site records are subject to Fourth Amendment protection).
4. Chamberlain, “*Court Ordered Disclosure of Historical Cell Site Location Information: The Argument for a Probable Cause Standard*,” 66 WASH. & LEE L. REV. 1745 (2009).

/s/

EBISE BAYISA
Assistant Federal Public Defender

REQUEST FOR A HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on the Defendant’s motion.

/s/

EBISE BAYISA
Assistant Federal Public Defender